

# **EXHIBIT**

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**From:** [Bob McClay](#)  
**To:** [Hochmuth, Farrell](#)  
**Cc:** [Marvin C. Ingber](#); [Jennifer Fink](#); [Hunt, Dean D.](#)  
**Subject:** RE: Pinto Update  
**Date:** Thursday, July 14, 2016 11:04:20 AM

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Farrell,

I agree that documents in Mr. Kaplan's possession that are responsive to the Trustee's discovery requests and not privileged are documents that you may properly seek from our clients. Frankly, given the Trustee's Rule 45 subpoena to Mr. Kaplan I assumed that my clients would not have to incur this expense. I have requested that Blake Sheppard provide an estimate of the cost of providing a copy of Mr. Kaplan's files related to legal work for our clients. Mr. Sheppard has examined Mr. Kaplan's files related to the Trustee's Rule 45 subpoena and advises that the files are 6-8' linear feet. He will obtain a bid from a copier vendor and provide it to me. I will not be in a position to order the copy until my clients have deposited the estimated amount in my trust account. Under governing Minnesota rules my firm is responsible for all file related vendor expenses. Additionally, when I receive the copy of Mr. Kaplan's files I will need to review all for privilege and relevance and determine responsive documents. This will require considerable time by myself and our staff. As I had not anticipated this expense I will require additional funds from our clients be deposited in our firm's trust account. I will estimate the cost of this additional unanticipated cost after I receive the copy of Mr. Kaplan's files. All of the above will be a considerable expense to my clients.

With the above in mind I ask that you hold off on further efforts to obtain Mr. Kaplan's files until you have reviewed my clients' discovery responses and we have had an opportunity to discuss settlement. With one exception (whether the first withdrawal by Mr. James Pinto falls within the two year look back?) there is no dispute as to the amount of the transfers and that my clients have no basis in the account. The merit issue is what happened to the money. The Trustee's discovery addresses this topic and is the reason I have retained a forensic expert. I do not have an exact deliverable date from our expert but I am pushing to have the work product by the end of July. I will continue to update you.

Best,

Bob

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**From:** Hochmuth, Farrell [mailto:[FHochmuth@bakerlaw.com](mailto:FHochmuth@bakerlaw.com)]  
**Sent:** Wednesday, July 13, 2016 5:17 PM  
**To:** Bob McClay  
**Cc:** Marvin C. Ingber; Jennifer Fink; Hunt, Dean D.  
**Subject:** RE: Pinto Update

Bob,

You are not entitled to withhold responsive information and documents while awaiting expert analysis. Produce what is responsive now. You note that you have "the bulk of non expert

information."

Additionally, as pointed out in our April 25 letters, Defendants are obligated to obtain and produce all responsive documents that are in their control and/or available upon their request, including those maintained by third parties on their behalf. Specifically, Sidney Kaplan's counsel has confirmed that he has responsive, non-privileged documents. Please confirm that Defendants' document production will include documents maintained by Mr. Kaplan on Defendants' behalf.

Thank you, Farrell

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**From:** Bob McClay [<mailto:bob@mcclay-alton.com>]  
**Sent:** Thursday, July 7, 2016 4:46 PM  
**To:** Hochmuth, Farrell  
**Cc:** Marvin C. Ingber; Jennifer Fink  
**Subject:** Pinto Update

Farrell,

Conferred with our forensic expert this afternoon. The delay in discussing the matter with our forensic accounting expert resulted from delays in receiving client funds to pay the expert. Those funds arrived today. Our expert understands that time is of the essence and will produce the requested forensic report ASAP. We have the bulk of non expert information and will be able to provide our clients discovery responses as soon as we receive the experts report.

I will continue to update you.

Best,

Bob

**Robert M. McClay**  
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